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**(1939) 01 MAD CK 0025**  
**In the Madras High Court**

Natesa Padayachi

APPELLANT

Vs

Krishna Padayachi and Others

RESPONDENT

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**Date of Decision :** 18-01-1939

**Acts Referred:**

**Citation :** AIR 1939 Mad 576 : (1939) ILR (Mad) 913 : (1939) 49 LW 602 : (1939) 1 MLJ 894

**Hon'ble Judges :** King, J

**Bench :** Division Bench

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**Judgement**

King, J.—This revision petition relates to a suit brought by one of two reversioners for partition of the estate left by one Kannu Padayachi

which had in the meanwhile been alienated by his widow Sundaram to a number of alienees. The suit was decreed in part and dismissed in part.

The plaintiff asserted in his plaint that he and the twenty-eighth defendant were joint reversioners with equal rights. The twenty-eighth defendant in

his written statement supported the plaintiff's case and asked that a decree might be given for his share of the property. There was, however, no

decree granted in favour of the twenty-eighth defendant and shortly after the decree was passed he applied for a decree in his own favour. This

was refused by the learned Subordinate Judge and the question whether that refusal was right or wrong is now before us in this petition.

2. We have been referred to two rulings which deal with a somewhat similar situation, on the earlier one of which the learned Subordinate Judge

has relied in refusing the twenty-eighth defendant his request. That is reported in Adhikari Vishnumurthiayya Vs. Authaiya and Others, . On the

other hand there is a case reported in Varada Appalanaidu Vs. Bodu Annamnaidu and Others, , in which the opposite view has been taken. The

main reason in our opinion for the position in *Adhikari Vishnumurthiayya Vs. Authaiya and Others*, is given at p. 156 in these words:

When as in the present case plaintiff sues for his own share alone and not as representing co-owners, nothing regarding the latter's share is or can legitimately be decided.

3. That proposition cannot possibly apply to the present case. No doubt the plaintiff did sue for his own share and did not specifically ask that the twenty-eighth defendant's rights should be decreed in the suit. But throughout the whole of the pleadings no distinction is drawn between the plaintiff and the twenty-eighth defendant and when it came to the framing of issues we find the 5th issue framed in these words:

Whether the alienations in favour of the contesting defendants are true, valid and binding on plaintiff and twenty-eighth defendant.

4. The respondent to this petition argues that there could be no decree in favour of the twenty-eighth defendant because he has been given no

opportunity of putting forward any separate defence which he might have to urge against the twenty-eighth defendant's claim. That contention must

be rejected in view of the terms of this issue. It is quite clear that the respondent was called upon to plead and prove any fact which suggested that

though any particular alienation might not be binding on the plaintiff, it was yet binding on the twenty-eighth defendant. He has made no attempt, as

already stated, to differentiate between the plaintiff and the twenty-eighth defendant in any manner whatever nor indeed even in the affidavit which

he filed against the twenty-eighth defendant's application after the decree had been given did he make any positive assertion regarding any special

pleas which he might have raised against the twenty-eighth defendant's claim. It is therefore clear that in the present suit there has been a decision

that in so far as alienations are not binding on the plaintiff they are also not binding on the twenty-eighth defendant and there seems to us no reason

whatever why the twenty-eighth defendant should not have been given a decree equally with the plaintiff in regard to these particular alienations.

The mere fact that he is styled twenty-eighth defendant and not the second plaintiff does not seem to us to be of any practical importance

whatever. We therefore think that this revision petition ought, subject to certain conditions, to be allowed and that the decree for which the

petitioner asks should be granted to him for his half share of what has been found by the learned Subordinate judge to constitute the estate of

Kannu Padayachi liable to division. The conditions are that the suit in the Court of first instance shall be regarded as if filed by plaintiff and the

twenty-eighth defendant for the whole of Kannu Padayachi's estate and that costs are payable by both of them on that valuation. In regard to

mesne profits the twenty-eighth defendant's claim shall be limited to mesne profits from 1927 onwards, that is to say, from three years before he

made the application, which is now under discussion in this petition. Defendant 28 must also pay before this decree can be granted to him, the

same court fee as plaintiff has paid.

5. Each side will bear its own costs in this revision petition.